

**EXECUTIVE OFFICE OF THE PRESIDENT****OFFICE OF MANAGEMENT AND BUDGET**

WASHINGTON, D.C. 20503

July 11, 1985

**SPECIAL****LEGISLATIVE REFERRAL MEMORANDUM****TO:****Legislative Liaison Officer-**

Department of Defense - Windus - 697-1305 (6)  
Central Intelligence Agency  
National Security Council  
Arms Control and Disarmament Agency

**SUBJECT:** State proposed report to the Conference Committee  
on S. 1160, the Defense Authorization bill.

(NOTE: While the State letter was written to OMB,  
the Department intends to turn it into a letter to  
the conferees.)

The Office of Management and Budget requests the views of your  
agency on the above subject before advising on its relationship to  
the program of the President, in accordance with OMB Circular A-19.

A response to this request for your views is needed no later than  
2 P.M. TOMORROW, JULY 12, 1985. Telephone comments are acceptable.

Questions should be referred to Ron Peterson (395-7300)  
the legislative analyst in this office.

*Randy Coleman for*

**RONALD K. PETERSON FOR  
Assistant Director for  
Legislative Reference**

**Enclosures**

cc: B. Howard  
A. Donahue  
J. Barie

**SPECIAL**



Washington, D.C. 20520

**JUL 11 1985**

Dear Mr. Stockman:

I am responding to Mr. Peterson's request for the views of the Department of State on the Department of Defense Authorization Bill (S.1160) as passed by the House.

The Department has no direct interest in or basis to comment on the bulk of the bill, which provides funding authorizations for a wide range of DOD activities and programs. There are, however, several provisions of the bill to which the the Department is opposed or about which it has serious concerns.

Section 114: In limiting deployments of the MX ICBM to 40, the House of Representatives has not followed the Senate's lead in recognizing and providing for the possibility of additional deployments in alternative basing modes. Such a limitation on the MX program would have a severe impact on the strategic modernization program, and consequently the U.S. ability to provide for a credible deterrent posture vis-a-vis the Soviet Union.

Section 119: We oppose the procedure set out in section 119, subsection (b)(2)(E), on "Conditions on Spending Funds for Binary Chemical Munitions" which would require the NATO allies to take a position on U.S. plans for chemical weapons modernization. We consider the decision to modernize the U.S. chemical weapons retaliatory stockpile -- which is intended to restore an effective U.S. deterrent to chemical weapons attack against U.S. forces, as well as allied forces -- as strictly a U.S. national decision. We have kept the allies fully informed of our decisions on this matter. The allies are also aware that we have no plans to deploy binary chemical weapons in any foreign country and that should a deployment be considered in the future, the U.S. will consult beforehand with the countries concerned.

Section 213: Section 213 would require certification that the Soviet Union had conducted a test of an ASAT weapon against an object in space before the U.S. could conduct such a test. This section would be unnecessarily restrictive and would impede progress on the ASAT program; further, such a unilateral restraint in light of the Soviet Union's operational ASAT capabilities, would likely have an adverse effect on progress in

The Honorable  
David A. Stockman,  
Director,  
Office of Management and Budget.

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the Space and Defense Negotiations in Geneva. Consequently, we believe that the certifications on such testing as contained in the Senate version of the Defense Authorization Bill would be more appropriate to the interests of the U.S.

Section 311: We oppose enactment of this section, which authorizes the Defense Department to provide non-lethal assistance to persons displaced or who are refugees because of the Soviet invasion of Afghanistan. We welcome the possibility of increased humanitarian aid being made available for Afghans from surplus Defense stocks, but have serious reservations about this particular provision. Organizationally, the Department of State, working closely with AID, has the experience and the expertise to administer extended humanitarian assistance programs for refugees. In this regard, however, the bill explicitly states that the Secretary of Defense shall have the "sole" responsibility for administration within the U.S. and that he "may not delegate" this authority outside the DOD. We are also concerned that no matter how packaged, humanitarian aid from the DOD would appear, or could be deliberately misconstrued, to be military or clandestine assistance. Finally, the programs authorized by the section would make the Government of Pakistan more vulnerable to Soviet charges that it is providing direct military assistance to the Afghan resistance -- charges the GOP has assiduously sought to avoid.

Section 1130: Section 1130 would require the Secretary of Defense to submit to the Congress an annual report on nuclear winter study findings not later than March 1 of 1987, 1988, 1989, and 1990. The Administration takes very seriously the need to regularly assess and report to the Congress and to the American people on the findings of such studies. The Administration should retain flexibility, however, as to the timing and regularity of such reports. In addition, although the report is required from the Secretary of Defense, the participation of other agencies will be required to set out Administration policy in the areas requested by the bill.

Section 1135: We support the objectives of Section 1135 concerning the need for increased Japanese defense efforts, but question the efficacy of the Section as written. The section calls on the Department of Defense to issue a report on U.S. defense expenditures in the Far East containing, inter alia, projections for national defense expenditures by Japan and the impact of Japanese defense expenditures on U.S. defense

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expenditures in Asia. The section singles out Japan among our East Asian and Pacific allies for particular scrutiny in the area of defense spending. We question whether the U.S. should open itself to public portrayal in Japan as seeking to dictate Japanese defense policy by commenting in official reports on our projections of Japanese defense spending. One of the criticisms of Japanese opponents of increased defense spending is that Japan acts only because of U.S. pressure. A report along the lines of that required in Section 1135 could feed such criticism at a time when, as Defense Minister Kato made clear in his visit to the United States in June, Japan clearly recognizes the threat and the need for an enhanced defense effort.

✓ Section 1200: This section, "Limitation on Introduction of Armed Forces into Nicaragua for Combat", prevents the obligation or expenditure of funds for the purpose of introducing U.S. forces into or over Nicaragua for combat. Though there are provisions for exceptions to this limitation, and for the preservation of existing provisions and treaty authority, the Department opposes its enactment in its present form. The President has declared his intention not to send American forces into Nicaragua or elsewhere in Central America. This commitment makes Section 1200 superfluous. Moreover, there is no provision in the section which would encourage Nicaragua to moderate its behavior. The President's power to deploy troops abroad derives from his constitutional authority as Commander-in-Chief of the Armed Forces, and his broad foreign policy powers. Any restrictions on the exercise of that authority--even when limited to a specific regional or country context--raise in our view serious constitutional questions. For the last two years, various legislative proposals concerning Central America have been introduced which purport to limit the President's authority in this area. Though Section 1200 contains exceptions which are quite broad, the provision is still an unwise and impermissible attempt to limit the President's flexibility and authority in this area. Not only is it more restrictive than the War Powers Resolution, it does not, nor can it, enumerate every instance where the President might need to act under his existing constitutional authority. For example, it is not clear to what extent this section would permit the President to take part in regional and multinational peacekeeping or enforcement activities conducted under the auspices of, for example, the U.N. Security Council.

We believe that the consulting and reporting provisions of the War Powers Resolution are sufficient to satisfy the Congress' legitimate needs in this regard. Alternatively, we would be willing to accept a revision of Section 1200 to a "Sense of the

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Congress" formulation, with a strongly worded section in the conference report which would indicate that the Congress does not intend to restrict the powers of the Commander-in-Chief to use the Armed Forces in conformity with appropriate laws under appropriate circumstances in Nicaragua.

Section 1209: This section, "Prohibiting the Department of Defense and the Central Intelligence Agency from Providing Assistance to the Nicaraguan Resistance Forces", prevents the obligation or expenditure of funds authorized by this Act by DOD or the CIA for the purpose of providing humanitarian assistance to these forces.


The Senate bill contains no such prohibition. Funding of humanitarian assistance for the Nicaraguan armed democratic resistance is provided for in the FY-85 Omnibus Supplemental Bill now under consideration in Congress. Section 1209 is therefore unnecessary. Although there are no funds in the DOD Authorization Bill for this purpose, we oppose such a restriction on the President's authority to administer this program.

The Administration strongly prefers the Senate supplemental appropriation language which would permit the President to decide which agency in our government is best suited to carry out such assistance and assigns the NSC a monitoring role in the administration of the program.

I request that these views be reflected, as appropriate, in the Administration positions at the forthcoming conference.

With best wishes,

Sincerely,

  
William L. Ball, III  
Assistant Secretary

Legislative and Intergovernmental Affairs